

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1657 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

K K PATEL

Versus

KAUSHIK KUMAR MAHESHCHANDRA DAVE

Appearance:

MR BB NAIK for Petitioner

MS MEGHA JANI for Respondent No. 1

MR. GHARANIA for Respondents No. 2 to 4

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 11/12/97

ORAL JUDGEMENT

1. Heard Mr.Naik for the petitioner, Ms. Megha Jani for Respondent No.1 and Mr. Gharania for Respondents No. 2 to 4.

2. Respondent No.1 herein was transferred from Ambaji to Bhuj on 15.7.1997. Instead of joining over

there, he filed a suit in the Court of Civil Judge, Senior Division, Palanpur, and obtained an ex parte ad interim injunction on 18.7.1997 preventing the enforcement of the transfer order. After a by-party hearing, the ad interim injunction was vacated on 16.10.1997. He preferred an Appeal against that order on 11.11.1997 and on that very day an ad interim order staying the operation of the trial court order came to be passed. Being aggrieved by that order, this Civil Revision Application is filed by the Officer who was to join at Ambaji in the place where the respondent No.1 was earlier working.

3. Since this is a matter concerning transfer of an employee and since normally the courts do not interfere in such matters, the matter was heard at length at admission stage itself. Notice had been issued by my Brother Parikh, J. on 5.12.1992 making it returnable on 9.12.1997. The matter has reached thereafter before me. This is a matter which requires consideration. Hence, Rule was issued on the matter and it is made returnable forthwith. Ms. Megha Jani has waived service of rule on behalf of respondent No.1 and Mr. Gharania has waived service of rule on behalf of respondents No. 2 to 4. All the advocates have made their submissions.

4. As stated above, since this is a matter of transfer and since it also appears from the record shown by Mr. Gharania that some proceeding was contemplated at departmental level against respondent No.1 prior to the transfer, it will not be proper to retain this ad interim stay which is granted on 11.11.1997 and that too granted without hearing the respondents in the appeal. Inasmuch as the ad interim order granted by the trial court was vacated on 16.10.1997 and inasmuch as the appeal was preferred nearly after four weeks thereafter on 11.11.1997, the lower appellate court ought not to have granted the ex parte ad interim order as against the Government. The appellate court has also directed production of some documents. For that purpose, the respondent No.1 had moved earlier this court after making an application in the trial court and that Civil Revision Application had come to be withdrawn on 1.10.1997. This fact does not appear to have been shown to the appellate court, which has again directed production of very document on 20.11.1997.

5. In view of what is stated above, without stating anything further, both these orders dated 11.11.1997 and 20.11.1997 are quashed and set aside. Ms. Megha Jani does not insist on any further reason in support of this

order and, therefore, they are not being recorded. She states that since the orders passed by the trial court are being interfered with, the respondent No.1 will have to join at Bhuj and seeks time to join over there. The respondent No.1 will accordingly join on or before 31st December, 1997 which would be reasonable time for him to join over there. It is, however, on the condition that he will hand over the charge of the post at Ambaji to the petitioner on or before 15th December, 1997.

6. Ms. Megha Jani states that the lower appellate court intends to proceed with the Appeal expeditiously which it may do so.

7. The rule is accordingly made absolute to the aforesaid terms. The respondent No.1 will pay Rs. 1,500/- (Rupees one thousand and five hundred only) to the petitioner as costs. Direct service is permitted.

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